

Multistate Tax Commission



**Multistate Tax Commission
Uniformity Committee
Washington Court Hotel
525 New Jersey Avenue NW
Washington, DC 20001
November 8 and November 9, 2004
Minutes of Meeting**

I Welcome and Call to Order

The Chair called the meeting to order. The following individuals attended one or more of the meetings of the Sales/Use Tax Subcommittee, the Income/Franchise Subcommittee, or the Full Uniformity Committee:

Name	State or Affiliation	Name	State or Affiliation
Ted Spangler, Chair	ID	Frank Hales	UT
Vince Perez	AZ	Tremaine Smith	WA
Carl Joseph	CA FTB	Private Sector	
Michael Brownell	CA FTB	Allen Stein	AT&T COST COST Deloitte Tax Fast Enterprise Plant, Bauer, Read, and Smith PWC Qwest Sutherland, Asbill, and Brennan Wal-Mart
Christina Manthey	CO	Deborah Bierbaum	
Joe Thomas	CT	Diann L. Smith	
Lynn Chenoweth	ID	Jennifer Tontz	
Kurt Van Brocklin	LA	Jason Clegg	
Leonore Heavey	LA	Debra Bratton	
Dale Vettel	MI	Scott Smith	
Cathy Wicks	MN	Ferdinand Hogroian	
Keith Getschel	MN	Doug Hearst	
Wood Miller	MO	Jeffrey Friedman	MTC Staff
John Feldmann	MO	Kendall Houghton	
Lennie Collins	NC	Claire B. Fontenot	
Gary Anderson	ND	Elliott Dubin	
Lee Evans	NJ	Frank Katz	
Donna Vasquez	NM	Jeff Silver	
Charlie Rhilinger	OH	Ken Beier	
Janielle Lipscomb	OR	Les Koenig	
John Rogers	SC	Roxanne Bland	
Adina Christian	TX	Shirley Sicilian	

II Approval of Minutes of July 2004 Meeting

Action on the Minutes of the July meeting was deferred until the March meeting.

III Public Comment Period

There were no comments at this time.

IV Executive Committee Liaison Report and Commentary

There was no report from the Executive Committee liaison.

V Executive Director's Report

The Executive Director reminded the Committee that the Bylaw 7 survey on the Uniformity proposal on Leasing transactions had been completed and would be acted on by the Executive Committee at their meeting on November 10th. The Executive Director commended the Uniformity Committee for their work on past projects.

The Executive Director distributed several articles by Martin Sullivan of Tax Analysts, Inc. describing the international shifting of business income to low-tax countries. Income shifting is a world wide phenomenon noted the Executive Director and he then cited the Committee's work on the compliance initiative:

- Model regulations on certain expenditure disallowance
- Model regulations for listed and reportable transactions
- Model regulations on inconsistent taxpayer reporting and filing
- The formation of a joint MTC/FTA information sharing committee co-chaired by Will Rice (WA) and Andrew Eristoff (NY). This committee is not yet active.

For pass-through entity reporting, the Executive Director noted that there is a great need to improve the education for state tax agency personnel on this topic. The Executive Director noted pass-through entities can be used in interesting ways. He informed the Committee that a significant number of high-end RV's are sold to pass-throughs incorporated in Missoula.

Federal Developments & Legislation

Internet Non-Discrimination Act

The Executive Director informed the Committee those two bills on the Internet Non-Discrimination Act that have passed – H.R. 49 in the House and the companion S 150 in the Senate. Some prominent features of the House bill H.R. 49 are:

- Making the ban on taxation of Internet access permanent
- the elimination of the “grandfather” clause
- exemption of Voice Over Internet Protocol (VOIP) from state taxation and regulation

The Senate bill (S150) would narrow the scope of the preemption, the “grandfather clause” would be preserved, and the moratorium would be for four (4) years. The Executive Director informed the Committee that the House would accede to S150 if the Senate agreed to shorten the period of the ‘grandfather’ clause and other modifications. The bills are now back in the legislative process.

The National Governors’ Association (NGA) wants S150 included in the upcoming Omnibus Appropriations bill.

The Executive Director told the Committee that the Senate Commerce Committee may rewrite the 1996 Telecommunications Act because of changing technology.

Other Items on Federal Legislation

- The Business Activity Tax (BAT) nexus bill may come up again in the House Judiciary Subcommittee
- The Streamlined Sales and Use Tax Act will not be acted on in this session of Congress
- The Federal Executive Branch will be considering fundamental tax restructuring including adoption of some form of consumption tax. A major question for states is: if Congress does adopt some form of consumption tax, will the infrastructure of the income tax remain so that if some states want to retain income taxes, they will be able to do so.

Central Registration Projects

The Executive Director told the Committee that MTC is developing a central registration system for the Streamlined Sales Tax Project designed for remote sellers without nexus. The system will have both long-form and short-form registrations for the convenience of merchants who wish to register in states where they have nexus and in states in which they do not have nexus.

The MTC handled approximately 500 early registrations and is currently working with the Conforming States on a Memorandum of Understanding (MOU) on the registration process. The Executive Director reminded the Committee that MTC does not own the data derived from the registration systems – the states own that data.

(Income/Franchise Tax Segment)

VI Reports and Action Items

Wood Miller (MO), Chair of the Subcommittee, opened the meeting with a discussion of the degree to which the member states had adopted recent MTC uniformity recommendations:

1. Principles of Determining the Existence of a Unitary Business
2. Business/Nonbusiness Income Definitions
3. Pass-Through Entity Reporting
4. Factor Presence Nexus Standard

- *State Tax Compliance Initiative*

The Subcommittee reviewed the progress and the recommendations of the State Tax Compliance Initiative. Of the nine recommendations adopted by the Income Tax Compliance Group, substantial work has been done on formulating models for a combined reporting statute and an expense disallowance statute, and René Blocker, Interim Executive Director, is working on a White Paper on overhauling UDITPA.

- *Combined Reporting Statute*

Shirley Sicilian, MTC Deputy General Counsel, described the draft of the statute. The Subcommittee discussed several of the major policy issues including whether combined reporting should be mandatory, world-wide or waters edge combination, whether certain deductions should be for the combined group or only for the affected entity, how to combine entities; i.e, use of either *Joyce* or *Finnegan* rule, and membership in the combined group – insurance companies, public utilities, banks, and pass-throughs according to the distributive share of the partners.

Mike Brownell (CA FTB) informed the Subcommittee that there are serious technical issues concerning the combination of entities with different tax bases. Further, MN found that some companies play “games” with *Joyce* rules. The Subcommittee decided that the use of either *Joyce* or *Finnegan* rules should be studied further. Shirley Sicilian, Mike Brownell, Ted Spangler (ID), Keith Getschell (MN), and Kim Ferrell (UT) volunteered to work on the *Joyce/Finnegan* problem. The other parts of the project will proceed while the use of either rule is explored further. The Subcommittee will work on developing regulations to accompany the combined reporting statute.

Minnesota moved and California seconded the motion that the October 28, 2004 draft of the combined reporting statute be moved to the Executive Committee for approval for public hearing; and that the *Joyce/Finnegan* issues be studied further by the small workgroup. The motion carried by a 12 to 0 vote.

- *Apportionment of Income from Telecommunications Services*

Shirley Sicilian provided an overview of the current telecommunications sourcing proposal. This was followed by a presentation by Deborah Bierbaum of AT&T and Doug Hearst of QWEST on how the telecommunications services are actually provided. Both Ms. Bierbaum and Mr. Hearst informed the Subcommittee that non-telecommunications revenue accounts for significant portions of their respective firms’ total revenues; and, that it is particularly difficult to assign revenues on a geographic basis--especially for multistate business customers.

Note: The subcommittee meeting was recessed at this point until 8:15 A.M. The discussion of apportionment of income from telecommunications services will be continued here for continuity purposes.

Ted Spangler and Shirley concurred that it would be helpful to identify the issues involved in sourcing sales to the destination. Discussion followed on working with industry to identify data from their business records to source the various types of telecommunications services receipts. Louisiana noted that they have a hierarchy of information that can be used to assign the sales

factor for net income or franchise tax purposes. A work group will be formed to study the various types of telecommunications receipts and a list of other issues including using cost-of-performance measures to source the sales factor. A teleconference will be scheduled for some time in January.

- *Model Statute on Tax Avoidance Transactions*

Shirley Sicilian noted that work on this statute was recommended by the Corporate Income Tax Sheltering Workgroup. The CITS WG recommended that the states piggy back on federal legislation requiring taxpayers to disclose abusive and questionable transactions, known as “reportable transactions.” The CITS WG also recommended that taxpayers be required to disclose inconsistent filing positions taken in different states. The model statute is designed to increase compliance by requiring taxpayers to disclose these transactions and filing positions. Further, preparers and tax shelter promoters would be required to provide lists of investors in tax shelters. Utah informed the Committee that they are drafting legislation along the lines of requiring preparers to list and report certain transactions. A drafting group consisting of Shirley Sicilian and staff from CA, IL, LA, and UT will present the results of their efforts at the March meeting.

- *Model Expense Disallowance Statute*

Frank Katz, MTC General Counsel, informed the Committee that the special drafting group had held a teleconference, but no draft of the statute has been produced. He stated that a draft of this statute will be ready for discussion at the March meeting.

- *Apportionment of Pass-Through Entity Income*

Frank Katz told the Committee that there will be no separate model statute for the apportionment of pass-through entity income but rather the apportionment of the income of these entities will be included in the model combine reporting statute. In all likelihood, the income will be apportioned at the partner level rather than at the entity level.

(Sales and Use Tax Segment)

VII Reports and Action Items

- *Federal Issues*

Roxanne Bland, MTC Counsel, provided an overview of federal issues including the possible renewal of the Internet Tax Freedom Act, and that Congress may rewrite the 1996 Telecommunications Act in response to the rapid technological change in the industry. She also provided a summary of the issues discussed at the Streamlined Sales Tax Project and the Conforming States meetings in October.

- *Hotel Intermediary Industry*

The group discussed the relationships among the intermediary, the customer, and the hotel. The industry representatives informed the Subcommittee that the intermediary does not purchase a block of rooms for resale to the ultimate customer but rather they act as an agent for the hotel room purchaser. Several state participants expressed discomfort with the industry representative characterization that hotel room purchasers do not receive a statement of the room tax paid from neither the intermediary nor the hotel. It was decided that the Subcommittee will resurvey states regarding their practices on taxing these transactions.

- *Model Affiliate Nexus Statute*

Frank Katz reviewed the draft of the statute. Texas moved and Missouri seconded the motion that the statute be sent to the Executive Committee for approval of a Bylaw 7 survey.

(Cooperative Uniformity Efforts and Other Matters)

VIII Reviewing Statements of Uniformity Policy Goals, Work Objectives and Timelines

- *Combined Reporting Statute*

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IX New Business

- *Factor Presence Nexus Standard as an Alternative to Federal Legislation*

The Committee voted against presenting the MTC Factor Presence Nexus Standard as an alternative to existing federal legislation on nexus.

- *Section XVII of Apportionment of Income Regulations*

This question refers to the sourcing of the sales factor of apportionment formula if one firm performs services on behalf of another party. California moved and Michigan seconded a motion that the Income/Franchise tax Subcommittee look at this section that requires a prime contractor to exclude subcontractor payments from the prime contractor's cost of performance calculation. The motion passed. Mike Brownell will prepare an issue paper for the Subcommittee to review and consider undertaking this project.

- *Training*

Ken Beier, MTC Training Director, asked for volunteers to staff a training advisory group for pass-through entities.

X Adjournment

Connecticut moved and Utah seconded the motion to adjourn the meeting. The motion passed and the meeting was adjourned at 12:00 P.M. November 9, 2004.